



**FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

October 28, 2003

Commercial Consultants  
2901 Neals Creek Drive  
Raleigh, North Carolina 27610-6145  
Attn: John Burwell, Principal

RE: EB-03-TC-090

Dear Mr. Burwell:

This is an official **CITATION** issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), for violations of the Act, and the Federal Communications Commission's rules that govern telephone solicitation.<sup>1</sup>

It has come to our attention that your company, or an entity acting on behalf of your company, delivered a telephone solicitation to a residential telephone line despite a previous do-not-call request by a member of the household. Section 64.1200(e) of the Commission's rules requires entities that make telephone solicitations to residential telephone subscribers to follow certain procedures to ensure that the subscribers are able to stop such solicitation calls. Specifically, entities that advertise through telephone solicitation must (1) develop written policies for maintaining a do-not-call list and make such written policies available upon demand; (2) inform and train their personnel engaged in any aspect of telephone solicitation about the existence and use of the do-not-call list; (3) place consumers who request not to receive telephone solicitations on the do-not-call list; and (4) honor each do-not-call request for ten years from the time the request is made.<sup>2</sup> In addition, the Commission has found that it is unlawful to call a residential telephone line to deliver a telephone solicitation if any member of the household has made a do-not-call request.<sup>3</sup>

Under the Act and the Commission's rules, a telephone solicitation is "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person;" calls that are made either by tax-exempt nonprofit organizations or to any person who has provided prior express invitation or

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<sup>1</sup> 47 U.S.C. § 227; 47 C.F.R. § 64.1200. References to the Commission's rules in this citation are to the rules as they existed at the time of the facts at issue here.

<sup>2</sup> 47 C.F.R. § 64.1200(e).

<sup>3</sup> *Consumer.Net v. AT&T, Order*, 15 FCC Rcd 281, 298 (1999).

permission to call or has an established business relationship with the caller are not considered telephone solicitations.<sup>4</sup>

The attached information provided to the Commission indicates that your company failed to honor a do-not-call request that was made by or on behalf of a residential telephone subscriber. That action violated section 64.1200(e)(2)(vi) of the Commission's rules.

It has also come to our attention that your company has delivered one or more prerecorded unsolicited advertisements to residential telephone lines (see attachment). The Act and the Commission's Rules prohibit transmission of unsolicited advertisements through prerecorded messages to residential telephone lines except under the very limited circumstances described in the Rules.<sup>5</sup> The term "unsolicited advertisement" is defined in the Communications Act and the Commission's rules as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."<sup>6</sup> The attached information provided to the Commission indicates that your company delivered such unsolicited advertisements, through prerecorded messages, to one or more residential telephone subscribers who do not have an established business relationship with your company and had not expressly invited or authorized the call(s). Those actions violate section 64.1200(a)(2) of the Commission's rules.

Separately, it appears that your company may have violated other Commission rules governing prerecorded messages and telephone solicitation. Under section 64.1200(e)(2)(iv), any telephone solicitation – whether live or prerecorded – must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and an address or telephone number (which may not be for an autodialer or prerecorded message player) at which the person or entity may be contacted.<sup>7</sup> According to the attached information received by the Commission, it appears that your telephone solicitation did not contain all the required information.

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<sup>4</sup> 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(3).

<sup>5</sup> The Commission's rules make it unlawful to "initiate any telephone call using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call is initiated for emergency purposes or ... is not made for a commercial purpose, is made for a commercial purpose but does not include the transmission of any unsolicited advertisement, [is made] to any person with whom the caller has an established business relationship at the time the call is made, or [is made by or on behalf of] a tax-exempt nonprofit organization. 47 C.F.R. § 64.1200(a)(2), (c); *see also* 47 U.S.C. § 227(b)(1)(B) (prohibiting all prerecorded calls to residential lines "unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission....").

<sup>6</sup> 47 U.S.C. 227(a)(4); 47 C.F.R. 64.1200(f)(5).

<sup>7</sup> 47 C.F.R. § 64.1200(e)(2)(iv). In addition, the Act and the Commission's rules impose separate identification requirements for prerecorded messages. Under section 227(d)(3)(A) of the Act, all prerecorded messages "shall, *at the beginning* of the message, state clearly the identity of the business, individual, or other entity initiating the call, and ... shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual." 47 U.S.C. § 227(d)(3)(A) (emphasis added); *see also* 47 C.F.R. § 64.1200(d)(e)(2)(iv) (imposing identification requirements for prerecorded messages delivered by automatic telephone dialing systems).

**Subsequent violations of the Communications Act, and the Commission's rules and orders of the type described herein may result in the imposition of monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.<sup>8</sup>**

Pursuant to section 503(b)(5) of the Communications Act, you may request a personal interview at the Commission's Field Office nearest to your place of business. The nearest office appears to be the Atlanta Office at 3575 Koger Boulevard, Room 320, Duluth, Georgia 30096-4958, which you can contact by telephone at (770) 935-3370. You must schedule the interview to take place within 30 days of the date of this citation. You should be prepared to discuss when your company recorded the do-not-call request(s) referenced in the attached consumer correspondence and why your company failed to honor such request(s). You also will be expected to discuss your procedures for training your company's telephone solicitors as to do-not-call responsibilities, and to specify what steps your company has taken to ensure future compliance with the Commission's do-not-call rules. Finally, you must supply a copy of your company's written do-not-call policy as required by section 64.1200(e)(2)(i) of the Commission's rules. Alternatively, you may submit a written statement addressing the specified topics, and attaching your company's written do-not-call policy, to the following address within 30 days of the date of this citation:

Kurt A. Schroeder  
Deputy Chief  
Telecommunications Consumers Division  
Enforcement Bureau  
Federal Communications Commission  
445 - 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

You should reference EB-03-TC-090 when corresponding with the Commission.

If you request a meeting, reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:  
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

As required by the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), you are hereby notified that the Commission's staff will use all relevant material information to determine what, if any,

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<sup>8</sup> See 47 C.F.R. § 1.80(b)(3).

enforcement action is required to ensure your compliance with the Commission's rules. This will include any information that you disclose in your interview or written statement

Finally, you should be aware that the knowing and willful making of any false statement or the concealment of any material fact in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder  
Deputy Chief  
Telecommunications Consumers Division  
Enforcement Bureau  
Federal Communications Commission


Enclosures

## COMPLAINT FOR [REDACTED]

Complaint Type: Wireline

Account Type: Residential

☐ Congressional Complaint

IC Number:	[REDACTED]	Case Type:	Complaint
Date Received:	05/20/2003 	Complainant:	[REDACTED]
Date Entered:	05/20/2003	Date Assigned:	05/21/2003
Entered By:	Internet User	Date Reassigned:	
Assigned To:	Mary Peters/FCCIN	Service Date:	
Date Closed:	05/21/2003	Response Date:	
Closed By:	Mary Peters	Original Analyst:	
Close Letter Needed?	<input type="radio"/> Yes <input checked="" type="radio"/> No	Disposed By:	Disposed Date:
		Removed By:	Removed Date:

Current Status: Closed

Correspondence:

Associated Case:

## Complaint Summary:

I have previously John Burwell for using recorded devices to call. I asked him to place me on his do not call list about 6 months ago and he did not honor this request. His recorded device called again today (May 20th) at 3:18pm. He was verbally threatening last time I spoke with him and for that reason, I do not wish to personally pursue a small claims action. I would like for you to put him out of business, or at least get him to stop calling.

Apparent Carrier(s):

Problem Number: 9197792430

Title: None	First Name: [REDACTED]	Middle Initial:	Last Name: [REDACTED]
Contact Name:	[REDACTED]	Best Time to Call:	
Contact Number:	Ext. [REDACTED]	Fax Number:	
Email Address:	[REDACTED]	Internet Address:	
PO Box:	[REDACTED]	Address:	[REDACTED]
City:	[REDACTED]	State:	[REDACTED]
		Zip:	[REDACTED]

On Behalf Of:	
Company Name:	
Party's Name:	Relationship with the Party:
Party's Contact Number: Ext.	PO Box:
	Address:
	City: State: Pr Zip:
Other Party that can be contacted?	
Name:	Relationship:
Contact Number: Ext.	Address:
	City, State: Zip:
**Amount of credit FCC effort generated:	\$0.00

Contacted the companies to resolve complaint? No

If yes, was the complaint resolved to your satisfaction?

If yes, name of company, name and number of company representative you spoke with:




Name: Phone: Ext:

Date you spoke with company representative:



If you contacted more than one company to resolve complaint, please list additional company(ies) name(s), name(s) and number(s) of company(ies) representatives and date you spoke to those representatives here:  
 Name: Phone: Ext:  
 Date you spoke with the second company representative:  
 Disputing charges listed on phone bill. **Total amount of dispute:**  
 Have you paid any of the disputed charges? No  
 Did the company billing for these charges adjust or refund some or all of the disputed charges? No  
 If yes, what was the amount of the adjustment or refund?  
 Willing to provide further written statements for use of the FCC or other agencies in enforcement actions against companies? Yes  
 Indicate the responsible carrier(s): AT&T Corporation  
 Other Carriers Listed: John Burwell  
 Subject Code: TCDN

#### ANALYSIS SECTION

<b>Correspondence Type:</b>	<input checked="" type="radio"/> Complaint <input type="radio"/> Inquiry	<b>Source Code:</b>	Internet
<b>Apparent Carrier(s):</b>		<b>Re-Serve Carrier(s):</b>	
<b>Responding Carrier(s):</b>		<b>Assigned Subject Code:</b>	Telephone Consumer Protection Act
<b>Supervisor Check:</b>	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Kay Walters			
<b>Activity Code:</b>	Direct	<b>Assigned Code Acronym:</b>	TCPA
<b>Final Responsible Party:</b>		<b>Sub-Category:</b>	Do Not Call List Request Not Honored (TDNC)
<b>Copy of Response Sent to Consumer by Carrier?:</b>	<input checked="" type="radio"/> Yes <input type="radio"/> No		
	<input type="radio"/> Yes <input checked="" type="radio"/> No	<b>Response Type:</b>	
<b>Mediation with Carrier/Complainant?:</b>			
<b>Referral Information</b>			
<b>Date Referred:</b>		<b>Deficiency Letter Sent?:</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No
<b>Slamming Referral:</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No		
	<b>Agency Name(s):</b>	<b>Company Name(s):</b>	
<b>Referred To:</b>			
<a href="#">Consumer Referral Letter</a>   <a href="#">Agency Referral Letter</a>   <a href="#">Create TCPA Letter</a>   <a href="#">Create Deficiency Letter</a>   <a href="#">Create Notice Letter</a>			
<b>Deferment Information</b>			
<b>Date Deferred:</b>	<input type="text"/>	<b>Reason:</b>	None
<b>Date UnDeferred:</b>	<input type="text"/>		
<b>Extension Information:</b>			
<b>Extension Requested:</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No		
<b>Extension Granted:</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No		

#### SERVE INFORMATION

## COMMENTS

### Comment History:

Comments By: Mary Peters  
Date: 05/21/2003 02:34:35 PM  
Status: Closed  
5/21/03 Sent TCPA letter and referred to EB  
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Comments By: Mary Peters  
Date: 05/21/2003 02:34:29 PM  
Status: Closed  
5/21/03 Sent TCPA letter and referred to EB  
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Comments By: Mary Peters  
Date: 05/21/2003 02:31:38 PM  
Status: Pending Analyst Review  
5/21/03 Sent TCPA letter and referred to EB  
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## DOCUMENT HISTORY

Created by	FCC_NOTES01	Date	05/20/2003 11:59 PM
Last Edited by		Date	

Closed By Gettysburg - Mary Peters



**From:** [REDACTED]  
**To:** Delores Browder  
**Date:** 5/23/03 1:07PM  
**Subject:** Re: Complaint filed with FCC re John Burwell

Hi Delores,

Thank you for following up. I have placed my answers below. We subscribed to privacy director over a year ago and I placed John Burwell on my phone's block list, but he keeps getting new phone numbers.

At 11:38 AM 5/23/2003 -0400, you wrote:

>This is in reference to your complaint filed with FCC's Consumer &  
>Governmental Affairs Bureau regarding receiving advertisements on a  
>telephone line after requesting the caller/business to place you on their  
>do-not-call list.  
>  
>The FCC's Enforcement Bureau reviews and collects data regarding alleged  
>violations of the Telephone Consumer Protection Act (TCPA) and we are  
>hoping that you will provide additional information to be associated with  
>your original complaint. The information needed is listed below:  
>  
>\* Please provide any telephone numbers referenced on your Caller ID  
>equipment or any numbers provided by the caller that will assist in  
>identifying the company and/or callers involved;

The caller ID number was 919-779-2430 on 5/20 at 3:18pm. Would you like for me to take a digital picture of the caller id and email it to you?

>\* Please provide all dates (month/year) that you requested the caller to  
>place your telephone number on their "do not call" list;

March, 2002. I have a digital picture of the original unsolicited prerecorded call. I pressed the number to have them call me back and at that point I asked to be placed on their do not call list.

>\* Provide all the dates that another call was received by or on behalf of  
>the same caller/business after the requests were made;

We received another prerecorded call where the callerID said John Burwell around September 2002. Then the call listed above on 5/20/2003. If you check your records, I may have previously reported the these calls to you.

>\* Were the calls received on your residential telephone line?

Yes.

>\* Were the calls advertising a product or service? If so, what was the  
>name of the product or service that was being advertised?



The calls in 2002 were regarding some burial insurance. I hung up on the prerecorded call on 5/20/2003 before it got far enough along to mention the service.

>\*Do you or anyone in your household, to the best of your knowledge, have any business relationship with the company?

No. We have no burial insurance coverage nor any desire to purchase such.

>\*Did you or anyone in your household, to the best of your knowledge, give the company prior consent to call?

No. My wife also says no. My children are all under the age of 7.

>Thank you in advance for your cooperation.

>

>

>Delores C. Browder

>Telecommunications Consumers Division

>Enforcement Bureau

>FCC

**From:** [REDACTED]  
**To:** Delores Browder  
**Date:** 5/28/03 10:07AM  
**Subject:** Re: Complaint filed with FCC re John Burwell

Mrs. Browder,

I have placed the pictures from last year on my home web server at  
[http://www.\[REDACTED\]/johnburwell1.jpg](http://www.[REDACTED]/johnburwell1.jpg) and  
[http://www.\[REDACTED\]/johnburwell2.jpg](http://www.[REDACTED]/johnburwell2.jpg)

The first was the unsolicited prerecorded call for burial insurance which had no identification of the calling party. To ascertain the identity of the calling party, I responded that I would like to be called back. The second call was the callback.

If the most recent call has not scrolled off my caller ID, I will take a picture tonight when I return home.

Thanks,  
 [REDACTED]

At 08:25 AM 5/28/2003 -0400, you wrote:

[REDACTED]

>

>I would love to have the digital photos of the caller ID number from March 2002 and May 2003.

>

>Feel free to attach by email or send via fax - 202/418-6533.

>

>

>Delores C. Browder

>Enforcement Bureau

>FCC



